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DO PLANNING REGULATIONS MATTER? A COMPARISON OF SOUTH EAST QUEENSLAND AND SOUTH FLORIDA

ABSTRACT

At one level the urban landscapes of South Florida and South East Queensland look quite similar. However at another level the context of planning and planning control and regulation is quite different. To understand the contextual differences between South Florida and South East Queensland, four themes will be used, some of which were based on Cullingworth¹ and Booth². The four themes include: demography, governance, the law and regulatory philosophy. After having evaluated South Florida and South East Queensland across these four themes, we propose a framework for examining whether these differences have shaped planning outcomes and in particular, the built form.

Keywords: *context, cross-national comparisons, South Florida, South East Queensland, planning controls, urban form*

DO PLANNING REGULATIONS MATTER? A COMPARISON OF SOUTH EAST QUEENSLAND AND SOUTH FLORIDA

PAPER

The need for and the benefits of cross-national comparative urban research has long been noted in the literature³. In planning, comparative research has two main functions: to improve practice through the interpretation and transfer of experience from one country to another; and to advance theory⁴. Cross-national comparisons are becoming quite common. In fact scholars have commented on the reemergence of comparative studies in the social sciences in general⁵ and urban studies in particular⁶ after a two-decade interlude. Comparative analysis has presented challenges in urban studies for a long time. Most of the studies are criticized for not being truly comparative⁷ or systematic⁸, for being solely descriptive with no explicit basis of comparison thus leading to conclusions of limited applicability⁹ and most importantly for not examining the context and thus failing to shed light on the underlying reasons of the similarities and differences¹⁰.

The aim of this paper is several-fold: to show the importance of context in cross-national comparisons; to provide a framework for examining contextual issues relevant to the built environment; to use this framework to compare South Florida and South East Queensland in terms of planning regulation; and finally to provide a method for comparing the built form between these two subtropical regions.

Why South Florida and South East Queensland?

There are several reasons for selecting these two regions for a comparative analysis. The first reason is that the authors have extensive knowledge of these two regions because they have either lived or worked in each of them. The second reason is that visually it would be difficult to tell the difference between them (see Figures 1 and 2). The third reason is that both are located in rapidly growing sub-tropical coastal areas, are prime destinations for domestic and international tourists, and have been subject to periodic of land booms and busts. A more in depth discussion of the similarities between these two regions can be found in Mayere et al¹¹.



Figure 1. Ft. Lauderdale, Florida



Figure 2. Gold Coast, Queensland

The Importance of Context in Cross-National Comparisons

The importance of context has been noted in various fields of comparative urban research from urban governance¹² to urban movements¹³. Despite the early emphasis on its importance in planning and urban policy¹⁴ and warnings for caution during its use few comparative studies define the factors involved in general terms or to set out classification schemes required for comparative study purposes¹⁵.

Comparative studies aiming at improving planning practice explore options of transfer of experiences, however as Faludi and Hamnett¹⁶ point out "any transfer of experiences has as its precondition an assessment of the context." Many scholars warn against importation of foreign planning practices without examining their context if they want the transfer to be successful¹⁷. In fact Masser¹⁸ summarizes the subject matter of comparative planning studies as "the study of planning problems and practice in different countries in relation to the institutional context of the respective countries." As Nijman¹⁹ says "where things happen affects how they happen." Yet most of the comparative research ignores context²⁰.

The difficulty of cross-national comparisons is universally acknowledged²¹ and explained with the differences between institutional, socio-cultural, economic and political contexts²² resulting from the legacies of the geographical and historical record²³. Thus, researches must look beyond the narrow confines of planning practice towards this context²⁴.

Acknowledging the difficulties associated with contextual differences from place to place Abu-Lughod²⁵ limits what she terms "legitimate comparisons" to those that are structured as semi-controlled experiments in which common variables set by a culture area and a level of technological competence are taken to be roughly constant. She suggests using climatic zone, political role, and the cultural-legal normative system as common parameters to enable the testing of the operation of variables of interest. Restricting the comparative study to those places with certain similarities (e.g. advanced capitalist, high real income, with democratic political systems) is a common approach in urban and regional studies²⁶. This is the "most similar systems" approach of Przeworski and Teune²⁷. "Most different systems" comparisons on the other hand are undertaken to demonstrate the applicability of phenomena across a range of settings²⁸. This aligns with Kohn's²⁹ cross-national research type "nation as context."

A Framework for Comparative Analysis

A key point of agreement among researchers is the need for a common framework to put comparative planning on a sound methodological basis and draw meaningful conclusions³⁰. The framework we propose is based on the comparative analysis research done by Cullingworth³¹ and Booth³². The framework has four broad themes: demography, governance, the law and regulatory philosophy.

Demography. This theme has three parts: population; growth rate; and density. Cullingworth³³ argues that planning controls are influenced by demography. A rapidly growing country/region/city will have a different set of planning controls than one that is growing slowly or declining in population. A region with 10 million people will have different planning controls than a region with 250,000 people. The manner in which development is regulated tends to reflect the volume and

growth of population. Thus demography is a key variable that must be examined when doing any comparisons between regions/cities/countries.

Governance. There are four aspects of this theme. The first relates to the system of local governments. It is important to understand how many levels of local government exist (regional, counties/shires, cities, etc.) and how these local governments relate to one another – are they independent from one another or do they have overlapping responsibilities?

The second aspect of governance involves service provision arrangements. What level of government provides what services? Do local governments compete with one another for development so that they can increase their tax base? A related question is how are these services paid for – how are revenues shared between the federal, state and local governments?

The third governance part relates to property taxation. There are several ways in which landowners can be taxed. One involves a tax on the land only and assumes that it is being used in the highest and best manner. Another method involves a two-part tax – a tax on the land and a tax on improvements to the land – like a house, office building, etc. The importance of this distinction is that the former method tends to discourage land banking and land speculation.

The final component of the governance theme addresses how planning and planning controls are administered. What role does the national or state government have in planning? Who administers the planning system – state, regional or local? If a state planning system exists, are there uniform requirements across all local governments?

The Law. This contextual theme has two parts – one that relates to property rights and the other to the role of the law (and lawyers) in planning. How property rights are considered has a direct impact on development control. The only exception to this is in countries like England that nationalized property rights shortly after World War II.

The second aspect of this theme is the role of the law and lawyers in the development control process. In some places, lawyers are involved in all aspects of planning from drafting and reviewing plans and in plan implementation while in other cases they only get involved in matters of litigation.

Regulatory Philosophy. The final theme deals with three aspects of regulatory philosophy. The first of these relates to the where on the regulatory – discretionary continuum the planning control system sits. The regulatory approach is one where the plan dictates the planning control decision, while the discretionary philosophy suggests that the plans are indicative of planning control decisions, but are not absolute.

The second aspect relates to the type of development that is regulated by planning controls. There are two schools of thought – one which involves planning controls being applied to most forms of development both large (housing estates, shopping malls, etc.) and small (fences, sheds, etc.) and the other where planning controls do not apply to small – house level matters. For the latter case these are regulated, but by building inspectors, not planners.

The final part of this theme involves another continuum, this one involving certainty – flexibility of planning controls. Those involved in regulating development often find it difficult to achieve the

appropriate balance between certainty and flexibility. Those being regulated often want both certainty and flexibility, which is difficult to achieve. In an effort to reach the “right” balance, many planners have advocated for the use of performance-based planning controls³³ (Baker et al. 2006) which provides some flexibility into development control.

Using the Framework to Compare South East Queensland and South Florida

At first glance the built environment of the South Florida (SF) region and the South East Queensland (SEQ) region appears very similar, particularly along the highly urbanized coast. However this apparent similarity belies some fundamental differences between the two regions in terms of context and the approach to regulating development. This section of the paper uses the framework described above to examine these two regions.

Demography. In terms of current (2009) population levels, the SF region had 4.34 million people compared to 2.97 for SEQ. Over the decade population in SF has grown by 370,000 compared to 490,000 in SEQ. In terms of population density, SF has a density of 403.6 persons per square kilometer compared to 132.6 persons per square kilometer for SEQ.

Governance. The organization of local governments is different between the two regions. The SF region is made up of three counties and 69 towns and cities. These towns and cities are embedded without counties and receive a number of countywide services. In some cases these services overlap, as is the case with police protection, which is provided by the counties and in many instances also by the cities and towns. In SEQ there are 11 local governments that are independent from one another.

As for service provision arrangements, in SF most services are provided at either the city or county level. In SEQ the provision of services is shared between the state and local governments. The state government provides police, fire and ambulance service while local government is responsible for most other services (water, wastewater, solid waste, recreation, etc.)

In SF (as is the case throughout Florida) property taxes are assessed on both land and improvements on the land. In SEQ (and throughout Queensland) property taxes (known as rates) are assessed only on land. However the valuation of the land for tax purposes assumes that it is being used to its highest and best use as per the local planning regulations. This difference means that it is very expensive from a property tax perspective to own a vacant piece of property that might be permitted to have a 10-storey apartment block. This is due to the fact that the property taxes reflect the potential use of the land, not the actual use. This contextual difference between the two regions means that it is much cheaper to land bank and speculate in vacant property in SF than it is in SEQ.

The final governance issue relates to how planning is administered and by what level of government. In Florida, there are plans at the state, regional and local levels with the Florida Department of Community Affairs administering the planning process. The state reviews and approves local and regional plans and their periodic updates. Local plans are required to be consistent with the regional and state plans. As for Queensland, the state also administers the planning process and reviews and approves local plans. One of the main differences between the

two regions is that the SEQ regional plan is a statutory plan and is administered by the State of Queensland.

The Law. Property rights are very important in the U.S. and issues related to planning and regulatory takings have been the subject of much litigation. This litigation influences how local plans are drafted and implemented. While property rights are also important in Queensland, there has been far less litigation on the issue of planning and regulatory takings and thus much less influence on how property rights have and are affecting development regulation.

The other aspect of the law is the role of law and lawyers in the planning process and development control. In part due to the litigation surrounding planning matters in Florida and more generally in the U.S., lawyers are involved in most aspects of plan drafting and implementation. In Queensland the role of lawyers in plan drafting and implementation is much reduced when compared to Florida and tends to be limited to review and comment.

Regulatory Philosophy. In terms of the type of development control used – regulatory vs. discretionary – Florida is clearly in the regulatory camp. Again this is in part due to the fact of the litigation that surrounds much of the planning process in the state. Thus the plan dictates what development control decision should be made and there is limited room for discretion. In SEQ (and Queensland more generally) they are also in the regulatory camp, although leaning towards the middle of the regulatory–discretionary continuum. This is due to the fact that most local plans have aspects of performance-based regulations, which permit some discretion in the development control decision-making.

In Florida and the SF region in particular, only larger projects are subject to getting planning approval. Development approval for things such as fences, sheds, renovations, etc. are handled by the building department and do not require involvement of the planners. However in SEQ (and more generally in Queensland and Australia) most types of development activity must get planning approval – even down to the level of putting up a fence or a playhouse in the backyard.

On the question of certainty vs. flexibility in planning regulation, SF would tend towards the certainty camp in large part because local government plans and development regulations tend to be prescriptive. Prescriptive plans tend to provide certainty to the exclusion of flexibility. In SEQ as noted above most local plans use a modified form of performance-based regulation, which by definition provides flexibility.

What conclusions can be made from this preliminary analysis? Overall, there are significant contextual and substantive differences between the two regions in terms of how development is regulated. While this is an interesting conclusion and is valuable for the reasons that were noted at the beginning of this paper it begs a larger question – do these differences in context and substance affect the built environment? It is beyond the scope of the paper an answer to this question, but we do propose a methodology that might be appropriate.

Comparing the Built Form of South East Queensland and South Florida

There has been considerable research on how to best measure urban form, particularly as it relates to measuring urban sprawl³³. Some of the key questions identified by this research include: what

time period to use; what is the most appropriate scale to use; and what are the best variables to use? By assimilating this recent research we have developed a methodology for comparing urban form.

Time Period. A review of the comparative built form literature suggests two alternatives for the time period: one is a snapshot for a single year and the other involves looking at the change between two time periods. For this analysis we propose a single time period of 2010/2011. The data for the SF region will be based on the 2010 U.S. Census and for the SEQ region on the Australian Bureau of Statistics Census that will be conducted in 2011.

Scale. A key issue in comparing built form is determining the appropriate scale to use. In a paper by Knaap et al.³⁴ they argued that different scales required different measures. However since this analysis focuses on the regional scale we have used measures that Knaap et al. and Ewing et al.³⁵ have identified as appropriate at the metropolitan level. Thus paralleling Ewing et al.³⁶, we use measures at the regional, census tract (for SF)/suburb (for SEQ) and block levels.

Variables. One of the challenges in selecting appropriate variables is to find ones that are available in both Florida and Queensland. We are proposing to use four categories of variables based on Ewing et al.³⁷ (2002): density, diversity (mix), centrality and design (street network). For each category, an index will be created using a number of different measures. For density, four measures will be used: persons/square kilometer; suburban density (percent of population living at densities of less than 2,500 persons per square kilometer; urban density (percent of population living at densities of greater than 25,000 per square kilometer; and density of the CBD (central business district). For diversity two measures will be used: land use mix (using the Herfindahl-Hirshman method); and percent of residents (at the census tract (SF)/suburb level (SEQ)) with a primary school within 1.6 kilometers of their residence. The centrality category uses five measures: coefficient of variation of population density across census tracts (SF) / suburbs (SEQ); rate of decline in density from the CBD; percent of population living within 5 kilometers of the CBD; percent of population living more than 15 kilometers from the CBD; and ratio of density between the highest density census tract/suburb and the region wide average. For the design category two measures will be used: number of intersections per square kilometer; and percent of small blocks (less than .025 square kilometers).

The measures within each of the four categories will be weighted equally and scaled to 100 when the index is calculated. To arrive at an overall index, the four indices also be weighted equally and summed. Once the indices are created we will be able to compare the urban form of the two regions not only with the composite index, but also across each of the four components: density; diversity; centrality; and design.

At this point we can only speculate as to the outcomes, however there are several possible outcomes -- one is that the built form between the two regions is significantly different; another possibility is that the built form is similar. The first outcome is what might be expected given the differences in context and development regulation as discussed above. However how might the second outcome be explained – major differences in context and development regulation but with minor differences in urban form? One explanation is that differences in context and development regulation are not as important in determining the built form, as are land development practices, consumer preferences and other private real estate market considerations.

CONCLUSION

The paper represents a partial step on the road to answering the question: do planning regulations matter? Until the last step of the analysis (comparing the built form) is done we won't be able to answer the question. However the preliminary research reported in this paper is valuable in that it provides the rationale for conducting comparative urban research with a focus on context. It also provides a framework for examining context and then uses that framework to examine the two case study regions: South Florida and South East Queensland. Finally the paper provides a methodology for comparing urban form that is applicable to these two regions.

The main conclusion that can be derived from this research is that seemingly similar urban landscapes (South Florida and South East Queensland) can have significantly different contexts. The questions that are yet to be answered are: 1) once subject to a quantitative analysis are the two regions really that similar; and 2) what role does context and development regulation play in helping to explain the similarities or differences?

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